

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anthony Michael Mabutas, Jr.

(b) County of Residence of First Listed Plaintiff San Francisco (CA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark W. Kelsey, Esq. -- The Law Offices of Mark W. Kelsey
877 Ygnacio Valley Rd., Ste. 208, Walnut Creek, CA 94596
(925) 476-5761

DEFENDANTS

Officer James Colley, in his official and individual capacities;
Antioch (CA) Police Department; and
City of Antioch

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983

Brief description of cause:

Unjustified shooting of unarmed teenager by a police officer

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
2,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/20/2014

SIGNATURE OF ATTORNEY OF RECORD

Mark W. Kelsey

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANTHONY MICHAEL MABUTAS, JR.,

Plaintiff

vs.

OFFICER JAMES COLLEY,

in his official and individual capacities,

ANTIOCH POLICE DEPARTMENT, and

CITY OF ANTIOCH, CALIFORNIA

Defendants

Case No.: 14-3796

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Anthony Michael Mabutas, Jr., for his complaint against Defendants James Colley, Antioch Police Department, and the City of Antioch, California states as follows:

INTRODUCTION

1. This is an action for money damages, declaratory relief, and injunctive relief brought pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution, and under the laws of the State of California, against Officer James Colley, a police officer of the City of Antioch, California Police Department, in his official and individual capacities, and against the Antioch Police Department and the City of Antioch, California.

2. Plaintiff Anthony Michael Mabutas, Jr., alleges that Defendant James Colley made an unreasonable seizure, assaulted, battered, and used unreasonable force against the person of Plaintiff., and that all of these acts were done under the color of state authority.

3. Plaintiff alleges that these constitutional violations were committed as a direct and proximate result of the policies and customs of Defendant Antioch Police Department and Defendant City of Antioch, and that said Defendants are liable under a theory of respondent superior for the torts committed by Defendant Officer James Colley.

JURISDICTION AND VENUE

4. This court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiff's cause of action arising under the Constitution of the United States and 42 U.S.C. § 1983, and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This court has supplemental jurisdiction over Plaintiff's causes of action arising under California state law pursuant to 28 U.S.C. § 1367,

6. Venue lies in the United States District Court for the Northern District of California because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Contra Costa County, California, under 28 U.S.C. § 1391(b)(2).

PARTIES

7. Plaintiff Anthony Michael Mabutas, Jr. is an adult citizen and resident of San Francisco County, California.

8. Defendant James Colley was a Field Training Officer (F.T.O.) and member of the SWAT team of the Antioch Police Department when the relevant events occurred. He is sued in his official and individual capacities.

9. Defendants Antioch Police Department and the City of Antioch are municipal entities and are the public employers of Defendant James Colley.

BACKGROUND

10. On or about June 4, 2014 at about 4:30 p.m., Plaintiff Anthony Michael Mabutas, Jr. was lawfully located in the vicinity of the 1600 block of Sycamore Drive in the City of Antioch, California, where he had gone to visit one or more of his personal friends who reside in and around that vicinity.

11. On or about June 4, 2014 at about 4:30 p.m., Defendant James Colley, in cooperation with other officers of the Antioch Police Department, was conducting police operations in the same vicinity.

12. Defendant James Colley approached Plaintiff Anthony Michael Mabutas, Jr. and pointed a loaded handgun (semi-automatic pistol) at Plaintiff's torso.

13. Plaintiff Anthony Michael Mabutas, Jr. responded by placing both hands palms-front, pointed upwards from the elbows, which were bent in a perpendicular angle, i.e. in the traditional sign of surrender.

14. Without saying a word, Defendant James Colley deliberately pulled the trigger on his handgun, causing a 9-mm. bullet to pierce the abdomen of Plaintiff Anthony Michael Mabutas, Jr., tearing through his flesh and leaving both entry and exit wounds, causing severe physical pain and injury, permanent physical scars, and lasting psychological injuries, including recurrent nightmares of the event.

15. At the time of the shooting, Plaintiff Anthony Michael Mabutas, Jr. was unarmed, made no threats, and made no gestures that reasonably could be interpreted as threatening.

16. Immediately upon being shot, Plaintiff Anthony Michael Mabutas, Jr. screamed in pain, and then exclaimed "Why did you shoot me?!", before slumping to the ground. Within minutes, it was determined that the extent of Plaintiff's injuries required emergency evacuation by life-flight helicopter to John Muir Hospital.

17. At no time has Plaintiff Anthony Michael Mabutas, Jr. ever been a gang member, nor has he ever had any form of gang affiliation whatsoever.

18. At the time in question, neither Defendant Officer James Colley nor any other officer at the scene was equipped with any form of video recording device on the body (commonly known as a "body-cam"). Therefore, no video of the shooting is known to exist.

COUNT I

42 U.S.C. § 1983, against Defendant James Colley

19. Plaintiff re-alleges and incorporates by reference ¶¶ 1 through 18.

20. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries set forth above against Defendant James Colley for violation of his constitutional rights under color of state law.

COUNT II

Assault, against Defendant James Colley

21. Plaintiff re-alleges and incorporates by reference ¶¶ 1 through 18.

22. Defendant James Colley acted intending to cause harmful contact with Plaintiff.

23. Plaintiff reasonably feared that he was about to be touched in a harmful manner.

24. Plaintiff did not consent to Defendant James Colley's conduct.

25. Plaintiff suffered severe physical and psychological harm.

26. Defendant James Colley's conduct was a substantial factor in causing Plaintiff's harm.

COUNT III

Battery, against Defendant James Colley

27. Plaintiff re-alleges and incorporates by reference ¶¶ 1 through 18.

28. Defendant James Colley battered Plaintiff by intentionally and offensively contacting Plaintiff's body by shooting Plaintiff with a bullet, without justification or excuse.

COUNT IV

42 U.S.C. § 1983, against Defendants Antioch Police Department and City of Antioch

29. Plaintiff re-alleges and incorporates by reference ¶¶ 1 through 28.

30. Prior to June 4, 2014, the Antioch Police Department and the City of Antioch developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of persons in the City of Antioch, which caused the violation of Plaintiff's rights.

31. It was the policy and/or custom of the Antioch Police Department and the City of Antioch to inadequately supervise and train its police officers, including Defendant Officer James Colley, thereby failing to adequately discourage constitutional violations by its police officers.

32. It was the policy and/or custom of the Antioch Police Department and the City of Antioch not to require the use of “body-cams” by police officers during confrontations with suspects believed by officers to be armed with deadly weapons or during incidents in which deadly force is, or is likely to be, used.

32. As a result of the above-described policies and/or customs, police officers of the Antioch Police Department, including Defendant James Colley, believed that their actions would not be properly monitored and that police misconduct would not be properly investigated.

33. As a result of the above-describe policies and/or customs, police officers of the Antioch Police Department, including Defendant James Colley, believed that deadly force could be used with impunity in the absence of video recording of the use of deadly force by officers.

34. The above-described policies and/or customs demonstrate a deliberate indifference on the part of the Antioch Police Department and the City of Antioch to the constitutional rights of persons within the City of Antioch, and were the direct and proximate cause of the violations of Plaintiff’s rights alleged herein.

COUNT V

Negligence, against Defendants Antioch Police Department and City of Antioch

35. Plaintiff re-alleges and incorporates by reference ¶¶ 1 through 34.

36. Defendants Antioch Police Department and the City of Antioch owe a duty of care to all persons who are present within their geographic jurisdiction to safeguard them from unreasonable risks of police abuses including the unjustified use of deadly force by police officers.

37. This duty of care specifically requires that police officers should be required to employ the use of electronic video recording devices attached to their persons (i.e. “body-cams”) in all situations in which police officers anticipate that they will confront a suspect who is armed with a deadly weapon, and in all situations in which deadly force is, or is likely to be, used.

38. Defendants Antioch Police Department and the City of Antioch breached their duty towards Plaintiff by failing to equip Defendant James Colley with a “body-cam”, and/or by failing to require its use.

39. As a direct and proximate cause of said breach of duty, Defendant James Colley was emboldened to pull the trigger on his handgun, secure in the knowledge that no video evidence would prove his wrongdoing. Thus, the above-described breach of duty was the actual and proximate cause of substantial injuries to Plaintiff.

COUNT VI

Respondent Superior, against Defendants Antioch Police Department and City of Antioch

40. Plaintiff re-alleges and incorporates by reference ¶¶ 1 through 28.

41. Defendants Antioch Police Department and the City of Antioch are liable for the assault and battery committed by Defendant James Colley against Plaintiff, since they employed Defendant James Colley, who committed said torts within the course and scope of his employment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this court:

- A. Enter judgment in favor of Plaintiff and against Defendants;
- B. Enter an order declaring Defendant James Colley's conduct unconstitutional;
- C. Award Plaintiff compensatory and punitive damages against Defendants in the amount of two million dollars (\$2,000,000.00);
- D. Award Plaintiff's counsel reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law;
- E. Enter a permanent injunction, upon proper motion, requiring Defendants Antioch Police Department and City of Antioch to adopt appropriate policies for supervising police officers' use of deadly force, including requiring their equipping and use of "body-cams"; and
- F. Grant to Plaintiff such other and further relief as may be just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial, pursuant to the Seventh Amendment to the Constitution of the United States, as to all claims for damages.

Respectfully submitted, dated this 20th day of August, 2014.


Mark W. Kelsey, State Bar of California #295818

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VERIFICATION

(Verification of Pleading and Declaration under Penalty of Perjury)

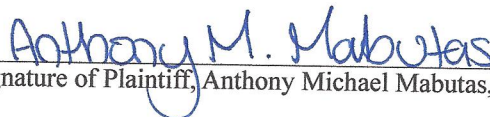
CASE TITLE : Anthony Michael Mabutas, Jr. v. Officer James Colley, et. al.

I, Anthony Michael Mabutas, Jr., hereby declare:

1. I am the Plaintiff in the above-entitled matter.
2. I have read the foregoing complaint and know the contents thereof.
3. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

Executed on this 20th day of August, 2014, at Contra Costa County, California.

I declare under penalty of perjury that the foregoing is true and correct.


Signature of Plaintiff, Anthony Michael Mabutas, Jr.